

1 deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In
2 assessing counsel's performance, the question is whether counsel's representation amounted to
3 incompetence under prevailing professional norms, not whether it deviated from best practices or
4 most common custom. *Stokley v. Ryan*, 659 F.3d 802, 811-12 (9th Cir. 2011) (citing *Harrington v.*
5 *Richter*, --- U.S. ---, 131 S.Ct. 770, 778 (2011)). "A reasonable tactical choice based on an
6 adequate inquiry is immune from attack under *Strickland*." *Gerlaugh v. Stewart*, 129 F.3d 1027,
7 1033 (9th Cir. 1997). Moreover, counsel has no duty to raise non-meritorious arguments. *Shah v.*
8 *U.S.*, 878 F.2d 1156, 1162 (9th Cir. 1989); see also *Boag v. Raines*, 769 F.2d 1341, 1344 (9th Cir.
9 1985) ("Failure to raise a meritless argument does not constitute ineffective assistance.").

10 The Plea Memorandum signed by the Petitioner in this case correctly stated the possible
11 maximum term of imprisonment as life in prison. (ECF No. 56). However, Petitioner claims his
12 attorney failed to provide him an interpreter prior to signing the agreement. (ECF No. 116-1, p. 6,
13 ll. 15-19). Nevertheless, the Court did provide an interpreter during the Rule 11 guilty plea
14 hearing where Petitioner was advised specifically that he could be sentenced to life in prison and
15 he agreed that he understood the maximum possible sentence the court could impose was life in
16 prison. (Transcript of Proceedings, Change of Plea, ECF No. 107, p. 14, ll. 3-7).

17 Likewise, both the Guilty Plea Memorandum (ECF No. 65) and the transcript of the Rule
18 11 guilty plea hearing demonstrate that the Petitioner was advised of his right to a jury trial and
19 his rights during trial: the presumption of innocence, the right to confront witnesses, the right to
20 present and compel witnesses, the right to remain silent and right to testify. (Transcript of
21 Proceedings, Change of Plea, ECF No. 107; p. 12, ll. 4-25, p. 13, ll. 1-7). Finally, during the Rule
22 11 hearing, Petitioner advised the Court that he had enjoyed sufficient time to discuss his case,
23 plea agreement and sentencing guidelines with counsel who had answered all his questions and
24 that he was satisfied with his representation. (Transcript of Proceedings, Change of Plea, ECF No.
25 107, p. 11, ll. 17-25; p. 12, ll. 1-3). At no time did he question the maximum penalty which could

1 be imposed at the discretion of the court despite any agreements by his counsel and the
2 government's counsel. During the sentencing hearing, Petitioner again stated that he understood
3 the Presentence Report.

4 Petitioner admits that despite his claims that his trial counsel was deficient; his counsel did
5 negotiate an omission of the two-level increase for a leadership role. (Deft.'s Memorandum, p. 4).
6 The recommendation made by the Probation Office in the Presentence Report included the two-
7 level increase; however, the Court determined that a two-level increase in the base offense level
8 for a leadership role was not contemplated in the plea agreement and that there existed insufficient
9 evidence to prove by a preponderance of the evidence that the Petitioner had a leadership role.
10 Instead, the Court's findings were consistent with the plea agreement. (Id.)

11 Petitioner also argues his trial counsel was ineffective for failing to request credit for time
12 he had already served in custody; however, the Bureau of Prisons, under the authority of the
13 Attorney General is the government agency who computes the amount of credit the defendant
14 receives. *U.S. v. Wilson*, 503 U.S. 329 (1992).

15 CONCLUSION

16 The record, including the written plea agreement and the Petitioner's own words during the
17 guilty plea and sentencing litany demonstrate that the Petitioner was advised of the
18 consequences of his guilty plea, understood the guilty plea and knowingly accepted the terms,
19 including the possible maximum sentence he could receive.

20 Therefore, the Court hereby **DENIES** Petitioner Jaime Barragan's Motion Pursuant To 28
21 U.S.C. § 2255 To Vacate, Set Aside or Correct Sentence By A Person In Federal Custody.

22 **DATED** this 12th day of August, 2013.

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24 
25 Gloria M. Navarro
United States District Judge